

4696 Mysore State
GOVERNMENT OF MADRAS.
Ravli
At 4/7/5

Old No. II-28, New Sect. II-16-
71,000-28-1-48

(1950) Department.

Endorsement
-D.O.-
Memorandum
Lodged

No. 45835 B/50.

Dated 5 / 8. 50

FURTHER PAPERS.

Department.

Number.

Series.

Date.

Mysore
"

Pb
E

Public Services - Madras Provincial and Subordinate services
Backward classes - 'Setti Balija' Community - inclusion -
General rules - amended - further instructions - requested.
v-v-v-v-v-v-v-v-v-v-v-v-v-v-v-v-v-v-v-v-v-v-v-v-v-v-v-v

From

Read:- B.P.Rt.3281 dated 24-5-1950.
G.O.Ms.No.2202 Pub(Ser) dated 17-5-1950.
Collector of Cuddapah Ref.A6.5342-50 d/29-5-50.
Collector of Anantapur 3309-50 A1 dated 3-6-50.

Ref: 1. B.P.Rt.No.3282 dated 24-5-1950.
ii. G.O.Ms.No.2202 ~~dated~~ Pub (Ser) d/17-5-50.

"35 Idiga (including setti Balija in the districts of Vishakapatnam, East Godavari, West Godavari and Krishna'. Both the ~~2~~ references are received in this office on 25-5-1950 I request clarification, whether in view of the amendment issued in the G.O. cited above, Setti Balijas of Cuddapah district shall be treated as Backward for appointment to public services

Ref: Board's proceedings Rt.3281 dated 24-5-~~19~~50
G.O.Ms.2202 Public (Services) Department dated
17-5-1950.

In the reference first cited above, the Board of Revenue observed that Setti Balijas as a community shall be treated as Backward for purposes of appointment to public services irrespective of the professions followed by different members. In this connection the attention of the Board is invited to G.O.Ms.No.2202 Public (Services) Department dated 17-5-1950 in which item 35 in schedule III to Part I of the Madras Provincial and Subordinate Service Rules, has been substituted by 'Idiga (including Setti Balija in the districts of Vishakapatnam, East Godavari, West Godavari and Krishna)'. There is no separate item as 'Setti Balija in the list of Backward classes in schedule III to part I of the Madras Provincial and subordinate services. In view of this G.O. Setti Balija's in the districts of Vishakapatnam East Godavari West Godavari and Krishna alone have to be classified as Backward community. The instructions in B.P.Rt.3281 dated 24-5-1950 are inconsistent, with G.O.2202 P.S. dated 17-5-19

Further in G.O.Ms.No.731 Rev. dated ~~13-3-1950~~ 13-3-50 communicate with Board's Ref.No.731 Rev. dated 13-3-1950. ~~Further in G.O.Ms.No.731 Rev. dated 13-3-1950~~ communicated with Board's RefNo.D. 9029-49-9 (C) Confidential dated 27-3-1950 the Government observe that Sri.B.Venkataramayya (Setti Balija in Anantapur district) belongs to a backward Hindu Community. It was on this ground that his name was included in the a proved list of Deputy Tahsildars. It is therefore seen that the instructions contained in ~~B.P.~~ B.P. Rt.3281 dated 24-5-1950 G.O.MsNo.731 Rev. dated 13-3-1950 and G.O.Ms.No.2202 P.S. dated 17-5-1950 are at variance with each other.

2. On my reference Rc.15882-49 A1 dated 13-9-49 the Board of Revenue in its reference D.9610-49-2 dated 13-2-1950 appears to have addressed Government for instructions whether or not Setti Balija community has to be treated as Backward Hindu Community for purposes of appointment to public Services. It was on this reference that G.O. No.2202 P.S. dated 17-5-50 was ~~issued~~ issued (Please see the address entries in the G.O.)

3. In the above circumstances it is not clear whether Setti Balijas in Anantapur district may be treated as Backward Hindu Community for purposes of appointment ~~xxxx~~ to public services.

Reference.

Submitted to the Government.

2. On a question raised by the Collector of Anantapur, the Board ~~of~~ in its Ref.D.9610-49-2 dated 13-2-1950 consulted select Collectors, and a copy of the Board's reference was marked to the Government for information. On receipt of the Collector's replies the Board examined the question of removing the 'Setti Balijas' or a section of them from the list of Backward Communities maintained for purposes of appointment to public services and decided that there was no need to recommend elimination of the case from the list. It accordingly informed the Collectors that the Setti Balijas shall be treated as Backward as laid down in Schedule III to part I of the Madras Provincial and Subordinate Service Rule irrespective of the professions followed by the members of the community.

3. But in the meantime, the Government have amended the General rules in the G.O. cited above. In the circumstances the Board ~~solicits~~ solicits instructions as to whether the community as a whole except the members residing in the districts, of Vishakapatnam, E.Godavari W.Godavari and Krishna shall hereafter be treated as Non-Brahmin community only and not B.P.Rt. 3281 dated 24-5-50 is ~~a~~ submitted for reference and ~~not~~ return/ as ~~xxxx~~ belonging to backward classes.

for Secretary.

To the Secretary to Government,
Revenue Department, Madras.
with ~~a~~ B.P.Rt.3281 dated 24-5-1950)

Revenue Department.

Memo.No. 45535 G/50-1 dated 5-8-1950.

Public (Services) - Madras Provincial and Subordinate
Services - Backward classes - Seth-Baliya community -
inclusion - clarification of orders.

Ref:- From the Board of Revenue, Ref.D.5258/50-1, dated
22-6-50.

The Board of Revenue is informed that the Sethi
Baliya community as a whole, except the member thereof
residing in the Districts of Vishakapatnam, East Godavari,
West Godavari and Krishna should, hereafter, be treated as
Non-Brahmin Hindu community only and not a backward class.

Revenue.

(True Copy)

Public Services - Madras Provincial and Subordinate Services -
Backward classes - Setti Balija Community - Classification of
Orders.

Ref: From the Board of Revenue Ref D.5258 50-1 dated ~~22.6.50~~
22-6-50.

To U.S.

Please see the Boards' reference in the c.f.

1. a. Orders were issued in G.O.731 Ms. Revenue dated 13-3-1950 directing the inclusion of the name of Sri.B. Venketaramayya ~~who~~ in the list of Deputy Tahsildar for Anantapur district for 1949. In the nomination roll sent by the collector he described him as belonging to Setti balija caste (Non-Brahmin) No specific mention was made that he belonged to a backward community. Before issuing orders including him, Government observed that caste to which he belonged ~~was~~ viz., Setti Balija was a backward community since the description "Idiga (including setti balija) was found under item 35 of schedule III, Backward classes referred to in rule 2 of the ~~General~~ General Rules for provincial and Subordinate services. Please Public (Services) also agreed with the view expressed at 'A' above consequently it was specifically expressed in G.O.731 Rev dated 13-3-50 that one of the reasons justifying his inclusion in the approved list of Deputy Tahsildar was that he belonged to a backward community.

2. Doubts as to the precise scope of the term "Setti balija" as backward community were expressed as early as in September 1949 by the Collector of Anantapur, please see his letter on pp1-2c.f. J. The Collector observed that in his district all the candidates of setti balija caste were not being given educational concessions on the ground that only setti balijas who followed the professions of tapping were eligible for much a concession, though the Madras Public Service Commission included the term "Setti ~~xxx~~ balijas" under "Idiga" without any such reservation ~~and~~ stated above. With a view to examine the point further the Board referred to the copy of the list of scheduled and backward communities enclosed to E&P.H.Memo No.94214/48-F&R dated 21-7-49 in which both the following descriptions of setti-balijas were referred to in 2 different places:---

Item 37: Idiga (including setti - Balija)

Item 126-A: Setti Balija (in the vizag) E.G. W.G. and Kistna districts)

The list referred to above was compiled solely with a view to promote educational and economic interests of the communities referred to therein and the list was based on article 37 and 301(i) of the constitution of India. Neither in the list prepared by the M.P.S.C. nor in the schedule III to part I of the provincial and Subordinate service rules did any item like 'A' above appear, at that time. The Board consulted certain select collectors in the matter but found that no uniform practice prevailed among these districts. The Board decided that item 35 schedule III to Part I of the Service Rules left no doubt that all setti balijas also belonged to a backward community irrespective of the nature of professions in which they were engaged. Since Government had also taken the same view in G.O.731 Ms. Revenue dated 13-3-50 that ~~Sri~~ Sri Venkataramayya a nontoddy tapping setti Balija of Anantapur District was also a member of a Backward community the Board did not consider it necessary to address Government for any class

clarification in the matter. Accordingly the Board informed the Collector of Anantapur that all Seth Balijas as a community shall be treated as backward for the appointment to public service as laid down in Schedule III to Part I of the Madras Provincial and Subordinate Services Rules irrespective of the professions followed by different members of this community.

3. Before the issue of the instructions by the Board as at 'A' above, Public (Services) department have also issued orders in G.O.No.2202 P.S. dated 17-5-50, amending item 35 of Schedule III to Part I of the Service Rules so as to restrict the term "Sethi Balija" used therein to those members of the community only in Vishakapatnam, East Godavari, West Godavari and Kistna Districts. This amendment brings the definition of Sethi Balija community as adopted for the purpose of Public Services into line with that found in the item 126-A of the list compiled for educational purposes and embodied in the Constitution of India. The Collector of Anantapur has however stated that he received the Boards' instructions referred to at 'A' on page 3 ante the and the G.O. 2202 (P.S) dated 17-5-50 about the same time and has requested clarification as to the correct position to be followed in the matter owing to their differing from each other. The Board has therefore requested orders whether the community as a whole, except the members residing in the districts of Vishakapatnam, East Godavari, West Godavari and Krishna shall hereafter be treated as Non-Brahmin Community only and not as belonging to backward community as instructed in B.P.3281 dated 24-5-50. Before confirming the Board's presumption expressed above, Public(Services) Department may be requested to offer their remarks and also put up for reference the original of the order dated 17-5-50 for an appraisal of the circumstances under which these orders were issued

Public (Services) Department.

Please see the Revenue Department note on pp.1-4 above. The backward community known as "Sethi Balija" in the particular districts referred to in the amendment issued in G.O.No.2202, Public(Services), dated 17-5-50, relates only to 'Idigas' who call themselves 'Sethi Balijas'. Attention is invited to this Department note as pages 6-7 N.F. of P. The Board's presumption referred to at 'A' on page 4 ante is correct. The original of G.O.No. 2202, Public(Services), dated 17-5-50 is put up at P.

The file may be returned to Revenue.

Revenue Department.

To U.S.

Notes from page 1 ante may be read Public (Services) have put up the G.O. containing the notes leading to the orders at M below at P. It will be seen thereupon that the orders in M were based on G.O.373 Education dated 27-2-48. The intention is that concessions should be given only to Idigas and to Sethi-Balijas who are Idigas by profession. As Sethi-Balijas in the districts of Vishakapatnam, East Godavari, West Godavari and Krishna belong to the Idigas community but call themselves as Sethi Balijas, the list of backward classes in M.E.R. was amended by adding an item 126-A : Sethi Balija (in Vishakapatnam, East Godavari

West Godavari and Krishna districts). Based on ~~this~~ this, Public (Services) department have also amended item 35 in Schedule III in Services Manual Part I as on page 2 of M. Public (Services) have therefore stated that the Board's presumption in para 3 on page 2 c.f. is correct. It may now be confirmed. Subject to orders a draft memo. is submitted for approval.

Mysore State

195

Department

confidential

SERIES.

G.O. No. 1893

Dated 16-6-1955

[Despatch Abstract.]

No.F. 12(98)-P/54.
Government of India.
Ministry of Finance.
(Department of Economic Affairs)

New Delhi, the 4th May, 1955.

From

Shri C.S. Krishnamoorth, I.A.S.,
Deputy Secretary to the Government of India.

To

The Finance Secretaries of all Part 'A' and
Part 'B' States (Except Jammu & Kashmir).

Subject:- Question whether "cooked food" is covered by the expression "cereals and pulses in all forms" appearing in entry 1 of the Schedule to the Essential Goods (Declaration and Regulation of tax on Sale or Purchase) Act, 1952 - Opinion given by the Attorney General of India.

Sir,

I am directed to say that in recent years certain State have levied afresh or enhanced the existing rate of, sales tax on the turnover of cooked food served in hotels, restaurants, refreshment rooms and eating houses. While some of the States did obtain the prior approval of the Government of India to their proposals before introducing necessary legislation in the State Legislature, others did not do so in the belief that the proposals did not attract the provisions of Section 3 of the Essential Goods (Declaration and Regulation of tax on sale or purchase) Act, 1952 read with entry 1 of the Schedule to the said Act. The Government of India had to draw the attention of such State Governments to the provisions of the Central Act of 1952 and they subsequently agreed to obtain the approval of the Central Government to their proposals.

2. The Government of India have since obtained the opinion of the Attorney General of India on the question whether 'cooked food' is covered by the expression 'cereals and pulses in all forms' occurring in entry 1 of the Schedule to the Essential Goods Act, 1952 and he has advised that cereals and pulses, even though cooked in some manner to make them edible would be covered by the expression 'cereals and pulses in all forms' used in entry 1 of the Schedule to the Central Act of 1952. A copy of the Government Solicitor's Statement of Case (Paras 1-8 and 15 *ibid*) and of the Opinion of the Attorney General of India (Paras 1-7 *ibid*) is enclosed herewith for information and guidance of the State Government. It is requested that the opinion given by the Attorney General may be treated as confidential.

Yours faithfully,
Sd. C.S. Krishnamoorthi.
Deputy Secretary to the Government of India

No.F.12(98)-P/54.

Copy (with six spare copies) forwarded to Home Minister with the request that it may be sent to Part 'C' States of Delhi, Kutch, Manipur and Vindhya Pradesh for information.

By order, etc.,

Sd. C.S. Krishna Moorthi.
Deputy Secretary to Government of India

STATEMENT OF CASE FOR THE OPINION OF THE
ATTORNEY-GENERAL OF INDIA.

The first question on which learned Counsel's opinion is required is whether "cooked Food" is covered by the expression "cereals and pulses in all forms" appearing in Entry 1 of the Schedule to the Essential Goods (Declaration and Regulation of Tax on Sale or Purchase) Act, 1952. The wording of this Entry has given rise to different interpretations by High Courts in India. The Entry runs as follows:-

"Cereals and pulses in all forms, including bread and flour, including atta, maida, suji and bran (except when any such article is sold in sealed containers)."

The words "cereals and pulses in all forms" appearing in the Entry do not by themselves include cooked food. However in view of the words which immediately follow, namely, "including bread and flour" a view may be taken that these words must be ~~correct~~ construed in the wider sense so as to include food cooked from cereals and pulses.

2. On the other hand a contention may be raised that the words "including bread" appearing in Entry 1 of the Schedule to the Central Act have the effect of extending the natural meaning of the expression "cereals and pulses in all forms", thereby giving an artificial meaning to the said expression, which would not have otherwise included bread and that this artificial meaning should be confined only to the ~~artificial~~ articles ~~meaning~~ ~~should be confined only to the~~ referred to in the Entry.

3. The word "form" connotes the visible aspect of a thing, now usually shape, configuration, the particular mode in which a thing exists or manifests itself. (See page 737 of the Shorter Oxford Dictionary, Volume I). Relying upon the aforesaid meaning the Hyderabad High Court has recently held that "rice in all forms" would mean all kinds of varieties of rice or species of rice, such as broken rice, kichidi rice,

Pichodi rice, rice flour, etc. and that "rice" in item No.1 of the exempted articles in Schedule I to the Hyderabad General Sales Tax Act, 1950 dealing with cereals should not be interpreted as meaning cooked rice or biriyani or palao. (See A.I.R. 1955 Hyd. 252). In this connection it may be pointed out that when the Legislature uses any terms or expression relating to any article of food, the same must be construed by the Courts in the sense in which it is understood in this country. The High Court further held that the intention of the Legislature in using the term "bread" in item 3 of Schedule I to the State Act is to include all kinds of bread which are consumed by the citizens of India, whether prepared in different ways or called by different names and that there was no justification for limiting the scope of the term "bread" to a particular kind such as "double roti".

4. While constructing a similar entry, being Entry 1 in Schedule III to the Assam Sales Tax Act, 1947, the Assam High Court has expressed the view that as long as a thing continues to be a cereal and retains its form as such, although it may have undergone some simple processes of boiling or parching, it is ~~different~~ difficult to hold that it would not be covered by the exemption provided in the said Entry. According to the High Court chira and muri do not cease to be cereals merely because rice or paddy has undergone the process of being flattened or fried in ~~it~~ assuming the form of chira and muri and that to all intents and purposes chira and muri and ~~thatxaxall~~ have not lost their character of cereals by any ~~other~~ process of transformation so as to make them being called by any other name and are therefore exempt from sales tax (1954 S.T.C. 365). In this case the court considered chira and muri more as forms of rice rather than as products thereof. The Court even goes to the extent of holding that even boiled rice may be described

as a cereal, though cooked rice of every description may not be described as such.

5. It will thus be seen that the Assam High Court takes a view different from that taken by the Hyderabad High Court in the matter. The former Court lays stress upon the interpretation of the word "cereal", whereas the latter lays stress upon the interpretation of the word "form".

6. Having regard to various entries appearing in the Schedule to the Central Act it is noticed that whenever it is intended to cover not only particular goods but also products of such goods or articles produced therefrom, intention in the matter is made clear by express words used in the entry and is not left to be inferred from the general meaning to be attributed to the words describing the particular goods. For example, see entries 3 and 13, which specifically refer to "milk products" and "petroleum products" respectively. Entry 1 refers only to bread, being one of the products of cereals, simplifying thereby that other products are excluded therefrom. It may thus be said that all the food cooked from cereals and pulses is not covered by Entry 1.

7. It is one of the rules of construction that all exemptions from taxation must be strictly construed and must not be extended beyond the express requirements of the language used. The dictum of Lord Halsbury in *Inland Revenue Commissioners V/S. Forrest* (15 A.C. 334) supports the view that since all exemptions from taxation increase the burden on other members of the community they should be deprecated, except to the extent permissible by the express language of the statute itself.

8. In view of the considerations referred to above it may be said that the reasonable view to be taken in the matter is that "cooked food" is not included in the expression "cereals and pulses in all forms" appearing in Entry 1 of the Schedule to the Central Act.

9. The next question is whether the amendment of .
Section 2 (j) (a) (ii) of the Central Provinces and Berar
Sales Tax Act, 1947 made by the Madhya Pradesh Act No. XX
of the 1953 is hit by the provisions of Section 3 of the
Essential Goods (Declaration and Regulation of Tax on Sale
or Purchase) Act, 1952.

10. The Central Provinces and Berar Sales Tax Act, 1947,
being the Sales tax law in force in the State of Madhya
Pradesh, has been recently amended by the Madhya Pradesh
Sales Tax (Amendment) Act, 1953, which received the assent
of the Governor on 9th November, 1953. Section 2(j) (a) (ii)
of the 1947 Act before its amendment by the 1953 Act ran as
follows:-

"(j) "turnover" means the aggregate of the amounts
of sale prices, and parts of sale prices received
or receivable by a dealer in respect of the sale or
supply of goods or in respect of the sale or supply
of goods in the carrying out of any contract,
affected or made during the prescribed period; and
the expression "taxable turnover" means that part of a
dealer's turnover during such period which remains
after deducting therefrom-

(a) his turnover during that period on-

(i) The sale of goods declared tax-free
under section 6;

(ii) Sales to a registered dealer of goods
specified in such dealer's certificate
of registration as being intended for
re-sale by him, or for use by him in
the manufacture of any goods for sale
or in the execution of any contract and
on sale to a registered dealer of containers
and other materials for the packing of such
goods;"

The Said Section after its amendment runs as follow

(j) "turnover" means the aggregate of the
amounts of sale prices, and parts of sale prices
received or receivable by a dealer in respect of
the sale or ^{in respect of sale or supply of goods} supply of goods in the carrying out of
any contract, effected or made during the prescribed
period; and expression "taxable turnover" means
that part of a dealer's turnover during such period
which remains after deducting therefrom -

(a) His turnover during that period on -

(i) the sale of goods declared tax-free
under section 6;

- (11) Sales to a registered dealer of goods declared by him in the prescribed form as being intended for resale by him by actual delivery in Madhya Pradesh for the purpose of consumption in that State or of goods specified in such dealer's certificate of registration as being intended for use by him as raw materials in the manufacture of any goods for sale by actual delivery in Madhya Pradesh for the purpose of consumption in that State, and of containers and other materials used in the packing of such goods;"

Sales as referred to above are to be deducted from the taxable turnover of a dealer. It will be noticed from the above amendment that it widens the scope of taxation by restricting the deduction from the turnover to sales of goods intended for resale or for manufacture in Madhya Pradesh with a view to subsequent consumption in that State. Thus goods sold to a registered dealer for resale outside the State would now be liable to taxation. Further the amendment is wide enough to apply to goods declared essential by the Central Act as well as to other goods. This raises the question whether the amendment required assent of the President under Section 3 of the Central Act. It may be added that when the amended Act was passed by the State Legislature, the same was not reserved for the consideration of the President and did not receive his assent as required by the said Section.

11. Section 3 of the Central Act requires the assent of the President to any law made after the commencement of the Act by a State Legislature imposing, or authorising the imposition of, a tax on the sale or purchase of any goods declared essential for the life of the community. Madhya Pradesh Act NoXX of 1953 is a law made by a State Legislature after the commencement of the Central Act. With a view to ascertain whether the said Section applies in the present case the question arises whether the amendment to of Section 2 (j) (11) of the State Act as referred to above imposes, or authorises the imposition of, a tax on the sale

of essential goods as contemplated by the said Section 3 of the Central Act.

12. Sales tax payable by a dealer is levied on his taxable turnover, Section 2(j) of the State Act is applicable to all kinds of goods and makes no distinction between the essential goods and non-essential goods. As provided by that Section before its amendment sale proceeds of certain goods any by certain persons were required to be deducted from the taxable turnover of a dealer. The amendment of the Section effected in 1953 restricts the scope of these deductions and thereby results in the di widening ~~taxscope~~ of the incidence of taxation. A law wideing the scope of taxation is as much a law imposing a tax as the one imposing it for the first time. Some sales which were previously excluded from the taxable turnover of the dealer would be now required to be included in his turnover and would be thus liable to taxation. This would have the effect of "imposing, or auth;rising the imposition of, a tax on the sale of goods" declared essential as contemplated by Section 3 of the Central Act and would not, it is considered, be effective without the assent of the President as required by the said Section.

13. In view of the considerations referred to above it is considered that the amendment of Section 2 (j) (a) (ii) of the State Act as referred to above would be hit by the ~~provisions~~ provisions of Section 3 of the Central Act. In this connection attention is invited to the views expressed by the Solicitor instructing Counsel (and concurred in by the Law Secretary) in his note dated 28-1-1954. (Annexure I) These views wer conveyed to the State Government. However, that Government is inclined to take a different view in the matter.

14. Contention of the State Government is that Section 2 (j) (a) (ii) of the State Act of 1947 as subsequently amended is valid in law, since it is designed only to alter

the scheme of registration of dealers so as to confine it to transactions of sale within the State. According to the State Government if a registered dealer now purchases goods for sale outside the State, the taxability of such sales will be governed by other provisions of the Act which are themselves subject to Article 286 of the Constitution and the under these provisions if a registered dealer sells goods to another registered dealer for sale outside the State, such sales would not be liable to tax. In this view of the matter the State Government considers that the amendment of Section 2 (j) (a) (ii) of the State Act does not appear to extend the scope of taxation and does not therefore attract the provisions of Section 3 of the Central Act. (See the State Government's letter dated 26th August, 1954. Annexure IIIO. It is submitted that the interpretation put by the State Government on the said Section is not reasonable and is not likely to be accepted by the court.

15. In view of the divergence of opinions in respect of matters referred to above it has become necessary to seek the opinion of learned Counsel in this behalf. Counsel is Requested to give his opinion on the following questions, namely:-

- (1) Is "cooked Food" covered by the expression "cereals and pulses in all forms" appearing in Entry 1 of the Schedule to the Essential Goods (Declaration and Regulation of Tax on sale or Purchase) Act 1952?
- (2) Is the amendment of Section 2 (j) (a) (ii) of the Central Provinces and Berar Sales Tax Act, 1947 made by the Madhya Pradesh Act No. XX of 1953 hit by the provisions of the Section 3 of the Essential Goods (Declaration and Regulation of Tax on Sale or Purchase) Act, 1952? and
- (3) Generally, .

(R.S.Gae)
Deputy Secretary to Government of
India

ANNEXURE I

NOTES IN THE MINISTRY OF LAW.

The question is whether the amendment of Section 2 (j) (a) (ii) of the Central Provinces and Berar Sales Tax Act, 1947 made by the Madhya Pradesh Act No. XX of 1953 is hit by the provisions of Section 3 of the Essential Goods (Declaration and Regulation of Tax on Sale or Purchase) Act, 1952.

2. Section 3 of the Central Act requires the assent of the President to any law made after the commencement of the Act by a State legislature imposing, or authorising the imposition of, a tax on the sale or purchase of any goods declared essential for the life of the community. Madhya Pradesh Act No. XX of 1953 is a law made by a State Legislature after the commencement of the said Act. With a view to ascertain whether the said Section applies in the present case the question arises whether the amendment as referred to in para 1 above made by the said State law imposes or authorise the imposition of a tax on the sale of essential goods as contemplated by the said Section.

3. Sale tax payable by a dealer is levied on his taxable turnover. Section 2 (j) of the State Act is applicable to all kinds of goods and makes no distinction between essential goods and non-essential goods. (Cotton is an essential goods as declared by the Central Act.). As provided by that Section before its amendment sale proceeds of certain goods and by certain persons were required to be deducted from the taxable turnover of a dealer. The amendment of the Section effected in 1953 restricts the scope of these deductions and results in the widening ~~the scope~~ of the incidence of taxation. A law widening the scope of taxation is as much a law imposing a tax as the one imposing it for the first time. Some sales which were previously excluded from the taxable turnover of the dealer would be now required

to be included in his taxable turnover and be thus liable to taxation. This would have the effect of "imposing, or authorising the imposition of, a tax on the sale of goods" declared essential as contemplated by Section 3 of the Central Act and would not therefore be effective without the assent of the President as required by the said Section.

4. In view of the above answer to the question raised in para 1 above is in the affirmative.

Sd. B.S. Gae,
28-1-1954.

I agree.

Sd. K.V.K. Sundaram,
29-1-54.

Ministry of Finance (Planning).

ANNEXURE II

No. 2158-1194-VIII

Bhopal, the 26th August, 1954

From:- Shri Ragho Raj Singh, I.A.S.,
Secretary to Government,
Madhya Pradesh.

To:- The Joint Secretary to the Government of India,
Ministry of Finance,
(Department of Economic Affairs),
NEW DELHI.

Subject:- The Madhya Pradesh Sales Tax (Amendment)
Act, 1953.

Sir,

I am directed to refer to your letter No. 2174-P/54 dated the 12th February 1954 on the above subject and to say that this Government have very carefully examined the contention of your Ministry as also the notes of the Central Ministry of Law regarding the legality of Section 2 (j) (a) (ii) of the Central Provinces & Berar Sales Tax Act, 1947 vis-a-vis section 3 of the Essential Goods (Declaration and Regulation of Tax on Sale or Purchase) Act, 1952. As a result, this Government are of the opinion that just as it can be argued following the view of the Government of India that section 2 (j) (a) (i)

of the Central Provinces & Berar Sales Tax Act, 1947 is not well founded in law, it could be contended with equal force that the section is legally not unsound in that it is designed only to alter the scheme of registration of dealers so as to confine it to the transactions of sales within the State. It, thus, only withdraws certain facilities and concessions hitherto enjoyed by registered dealers to which they ~~take~~ can make no legal claim under the Act. Consequently if a registered dealer now purchases goods for sale outside the state or purchases raw materials for manufacture of goods for sale outside the state he will have to do that independently of his registration certificate and the taxability of such sales, so far as the selling registered dealer is concerned, will be governed the other provisions of the Act which are themselves subject to Article 286 of the Constitution. Under these provisions, if a registered dealer sells goods to another registered dealer for sale outside the State, such sales would still not be liable to Sales Tax. According to this reasoning, the amendment to Section 2 (j) (a) (ii) of the Central Provinces and Berar Sales Tax Act, 1947 introduced by the Madhya Pradesh Sales Tax (Amendment) Act, 1953 does not appear to have widened the scope of taxation. As the legal position about section 2 (j) (a) (ii) admits of divergent views, this Government would prefer to amend the section if it is necessitated by an authoritative judicial pronouncement in this regard.

Yours faithfully,

Sd/- Ragho Raj Singh,
Secretary to Government,
Madhya Pradesh,
Separate Revenue Department

OPINION.

1. The first question is difficult to answer in the form it is worded. "Cooked food" mentioned in the question may consist of cereals or pulses alone or mixed with other materials. It may assume various forms even when consisting exclusively of cereals and pulses. Where a provision of this character is concerned the answer could best be given only in reference to particular articles of cooked food the form and character of which are known.
2. The material words are "cereals and pulses in all forms". The form of a thing is its visible aspect, its shape." (Shorter Oxford Dictionary, Vol.I page 737). Therefore, the words include cereals and pulses whatever their visible aspect or shape. Cereals may be in the form of grain or broken grain or ground as flour. Cooked cereals or pulses will be cereals in a different form; for example, fried, baked, or cooked gram. Gram in these forms would, I think, therefore be included in the opening words "cereals and pulses in all forms". Again, cereals and pulses may be pressed together so as to form a ball or a cake and the stuff pressed together may be either raw or baked or fried. These balls and cakes will still, I think, be forms of cereals and pulses.
3. The latter words "including etc." throw light I think, on the meaning of the preceding words. The intention would seem to be to ensure that all forms taken by cereals and pulses whether by reason of their being subjected to mechanical or cooking processes would be covered by the first item in the schedule.
4. In judging whether an article of food falls within item 1, one has, therefore, to ascertain whether it is a form of cereals or pulses. If the article is cereals or pulses in some form it would be within item 1. Whether it has been subject

to a cooking process or not would, I think, be irrelevant. If the article consists of cereals or pulses mixed with other food stuff it would not be a form of cereals or pulses.

5. The opening expression used in the first item appears to be much wider than that in the Hyderabad case (AIR (1953) Hyderabad 252), or in the Assam case (1954) S.T.C. 365. The expression in those cases was merely "all cereals and pulses" "all forms of rice". The item there did not embrace all forms of cereals and pulses.

6. I accept the rule of construction in statutes which create an exemption from taxation as stated in 15 A.C. 334. The Hyderabad and Assam cases were cases where the courts were dealing with exemptions from sale tax. The statute with which we are concerned is, however, of a different character. Its scheme is to declare certain articles to be goods essential for the life of the community so that the taxing power of a State may not extend to these articles unless the taxing power is exercised with the assent of the President. Having regard to the purpose of this statute which is to prevent taxation except with the President's assent. of these essential goods, a wide construction should be put on the items. If bread and flour need this protection equally would the protection be needed for cereals and pulses which may be cooked in some manner to make them edible.

7. What I have stated above sufficiently answers the first question.

8. As to the second question, it is clear that the definition of "turnover" in section 2 (j) (a) (ii) narrows the scope of the deduction to be made from the taxable turnover and in so far as it does this the area covered by the taxation is increased. Therefore, if the matter rested merely on a consideration of this amendment, the amending legislation would be hit by section 3 of Act LII of 1952. A law will have been

made "imposing or authorising the imposition of a tax on sale of goods", to wit, sales to a registered dealer of goods which cannot be declared by him as being intended for resale by actual delivery in Madhya Pradesh for the purpose of consumption in that State or as being intended for use by him as raw material in the manufacture of goods for sale by actual delivery in Madhya Pradesh for the purpose of consumption in that State.

9. The Madhya Pradesh Government seem, however, to accept this position. What they seem to contend is that the Act contains other provisions under which sales to registered dealers of goods which cannot be declared by them to be intended for the purposes mentioned in the amendment will, notwithstanding the amendment, be free from tax. I am not able to find these provisions. If there are any such provisions it is clear that no additional sales have been taxed by the amendment and sec.3 of the Central Act will not apply.

10. I will, therefore, answer the second question by stating that the amendment of section 2 (j) (a) (ii) of the C.P. & Berar Sales Tax Act, 1947, made by the Madhya Pradesh Act XX of 1953 would be hit by the provisions of the section 3 of the Central Act LII of 1952 unless there are provisions in the ~~amxx~~ Madhya Pradesh Act which notwithstanding the amendment prevent the taxation of these sales which have been excluded from the exemption originally enjoyed by them ~~xxx~~ from the taxable turnover.

11. I have nothing to add.

New Delhi,
31st March, 1955.

Sd. M.C. SFTALVAD,
Attorney-General of India.

Revenue Department.

Tax-M.G.S.T. Act, 1939 - "Cereals and Pulses in all forms" - Whether includes "cooked food" - Attorney-General's ~~20~~opinion.

From the Government of India, Ministry of Finance (Department of Economics Affairs), Letter No. F.12(98)-P/54, dated 4-5-55.

To A.S.

Please see the Government of India's Letter on page 1 and its enclosures on pages 2-14 C.F. The Attorney-General's opinion is that if an article is "cereals or Pulses" in some form it will be covered by the expression "cereals and pulses in all forms" occurring in item 1 in the Schedule to the Essential Goods (Declaration and Regulation of Tax on Sale or Purchase) Act, 1952 whether it has been subject to a cooking process or not, and that if the article consists of cereals or pulses mixed with other foodstuff it will not be a form of cereals or pulses.

2. No amendments have been made to the M.G.S.T. Act, 1939 after the Essential Goods Act (Declaration and Regulation of Tax on Sale or Purchase) Act, 1952 came into force, which would require the approval of the Central Government with reference to the present opinion of the Attorney General. The papers may be recorded after perusal by Law & Finance. ¹¹
(This separately proposed to amend the ^{vis}promise to Sec.3(1)(b) of the M.G. S.T. Act so as to remove a defect noticed in the matter of levying & sales tax on articles of food and drink sold in a hotel, boarding house or restaurant and to reduce the turnover limit from Rs.25,000/- to Rs. 20,000/- in respect of those articles for purposes of taxation. The Government of India concurrence to the above proposals has already been obtained

The view of the Attorney-General at A. on page 15 ^{he} ^{CF} will also be interest when dealing with amendments to the Sales Tax Act, which indirectly increase the tax on essential commodities.

Law Department.

Seen thanks.

Finance Department.

May be forward and returned to Revenue.

To A.S.

The notes from page ~~xxx~~ 1 ante may be read. The
papers may be

G.O.Ms.No. 1893 dated 16-6-55.

RECORDED.